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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2104/2011

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Nikolai Valetov (represented by counsel, Anastasia Miller)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	13 September 2011 (initial submission)
Document references:	Special Rapporteur's rules 92 and 97 decision, transmitted to the State party on 27 September 2011 (not issued in document form)
Date of adoption of Views:	17 March 2014
Subject matter:	Extradition to Kyrgyzstan
Substantive issues:	Refoulement; fair trial
Procedural issue:	Compliance with the Committee's interim measures request; non-substantiation; non-exhaustion of domestic remedies
Articles of the Covenant:	7; 14, paragraph 3
Article of the Optional Protocol:	1; 2; 5, paragraph 2 (b)
	[Annex]

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 2104/2011*

Submitted by:	Nikolai Valetov (represented by counsel, Anastasia Miller)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	13 September 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 March 2014,

Having concluded its consideration of communication No. 2104/2011, submitted to the Human Rights Committee by Nikolai Valetov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views pursuant to article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Nikolai Valetov, a national of the Russian Federation, born on 9 May 1952. At the time of submission, he was detained in Kazakhstan and subject to an extradition request to Kyrgyzstan. He submitted that if Kazakhstan proceeded with his extradition to Kyrgyzstan he would be arrested and tortured in violation of article 7 of the International Covenant on Civil and Political Rights. He also alleged to be a victim of violations by Kazakhstan of his rights under article 14, paragraph 3 of the Covenant.[1] The author is represented by counsel, Anastasia Miller of the Kazakhstan International Bureau for Human Rights and Rule of Law.

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* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

[1] The Optional Protocol entered into force for the State party on 30 September 2009.

1.2 On 27 September 2011, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to extradite the author while his case is under consideration by the Committee. On 14 October 2011, the Committee received information that the extradition of the author was imminent and reiterated the request for interim measures to the State party. On 21 October 2011, the Committee received information indicating that the author had been extradited to Kyrgyzstan on 14 October 2011. On the same date, the Committee requested the State party to provide clarification as to the whereabouts of Mr. Valetov.

The facts as presented by the author

2.1 The author submits that, in 2001, he was living in Kyrgyzstan in the home of his niece Antonina Churakova, who had an intimate relationship with a police officer and often hosted "parties" at which police officers gathered to drink. He tried to forbid those gatherings and entered into conflict with some of the police officers. In June 2001, he witnessed his niece murdering her mother-in-law, during a visit to the latter's home.

2.2 The author submits that immediately after the murder he was arrested and accused of the murder and a number of other crimes. He maintains that the criminal charges against him were faked by the Kyrgyzstan police. The author submits that, while in detention, he was tortured: he was handcuffed and hung by the handcuffs, beaten, his fingers were burned, a gas mask was placed on his head and the airholes were repeatedly blocked, he was threatened with rape with a truncheon, he was subjected to electric shocks through his genitalia. The beatings were so severe that his scrotum was "destroyed" and he became an invalid. The author claims that he requested an examination by a doctor several times, but did not receive any medical attention.

2.3 On 23 August 2001, the author escaped from the detention centre in Kyrgyzstan and managed to illegally cross the Kyrgyz border into Kazakhstan. The author submits that he approached a police officer and requested protection and assistance in contacting the Russian Federation authorities. The police officer took away his Russian Federation passport and military ticket and the documents disappeared. From that moment, the authorities instituted proceedings against the author as if he was a citizen of Kazakhstan. He was arrested and charged with numerous crimes[2] allegedly committed in Kazakhstan. On 3 February 2003, the Ryskulovski District Court, among other crimes, convicted the author of theft and robbery, and sentenced him to 16 years' imprisonment. Following numerous appeals the sentence was reduced to 7 years' imprisonment. The author was placed in a correctional colony, from which he escaped in April 2004. After that, at an unspecified date, he returned to Kyrgyzstan.

2.4 On an unspecified date, the author was arrested in Kyrgyzstan after committing a theft. He stated that his name was Tytryshny and he was convicted for theft under that name. He was released from prison in 2005 following an amnesty and returned to Kazakhstan in January 2006. On an unspecified date, he was arrested and a certificate that he was citizen of Kazakhstan was issued. The author submits that the 2001 Kyrgyzstan case had been transmitted to the Kazakhstan law enforcement by Kyrgyzstan in 2002 and that the Kazakh authorities intended to try him on charges related to the 2001 events in Kyrgyzstan, which they would have been entitled to do, if he was a Kazakh citizen. His protests that he was a citizen of the Russian Federation were initially rejected, but,

[2] The author was charged with crimes under articles 178, paragraph 2 (Robbery), 175, paragraph 2 (Theft), and 259 (Illegal purchase, transportation or storage for the purposes of marketing, manufacture, processing, shipment or selling of narcotic substances or psychotropic substances).

following extensive legal proceedings, on 19 August 2008, information was received from the Russian Federation authorities, confirming that he was a Russian Federation citizen. Based on that information the Kazakhstan authorities transferred the 2001 criminal case to the Kyrgyzstan justice system.

2.5 The author was serving the remainder of his prison term in Kazakhstan and was due to be released on 15 July 2011. However, on 11 July 2011, based on a request for extradition from the Office of the Prosecutor General of Kyrgyzstan, the Kostanay Prosecutor ordered that the author be placed under "extradition remand" for 40 days, based on article 534 of the Code of Criminal Procedure of Kazakhstan. On 21 July 2011, the Kostanay District Court confirmed the detention order; on 18 August 2011, the Prosecutor ordered and the Court confirmed that the detention should be extended until 15 September 2011; on 31 August 2011 the Kostanay District Court confirmed that decision as well.

2.6 On 23 August 2011, the Office of the Prosecutor General took a decision to grant the extradition request against the author. His appeal before the Kostanay District Court was rejected on 21 September 2011. His further appeal to the Kostanay District Court was also rejected. The author submits that the latter decision was final, and no further appeal was possible and that, in accordance with the decision of the Office of the Prosecutor General of Kazakhstan, dated 23 August 2011, he was liable to be extradited to Kyrgyzstan. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author submits that his extradition to Kyrgyzstan would lead to his arrest and torture. He maintains that because he was tortured in Kyrgyzstan before, and because he escaped from a detention centre there, the risk of torture is imminent. He claims that the Kazakhstan authorities are aware of the fact that he had been tortured and that torture in Kyrgyzstan is applied routinely and that, if they extradite him, they would be violating article 7 of the Covenant.

3.2 The author also alleges violations of the domestic criminal procedure, which led to violations of his rights under article 14, paragraph 3 of the Covenant. Specifically, the author submits that during the extradition proceedings, on 11 July 2011, he was not allowed to meet with his lawyer. He also requested and was denied meetings with his lawyer on 18 July 2011 and 19 July 2011, and his numerous complaints in that regard were ignored.

The State party's observations on admissibility and merits

4.1 On 9 November 2011, the State party submits that, on 14 October 2011, the author had been handed over to the law enforcement authorities of Kyrgyzstan following an extradition request of the Office of the Prosecutor General of Kyrgyzstan. The latter had presented to the State party guarantees for the respect of the author's human rights, including the assistance of lawyers, the "non-application of torture", in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other guarantees. The State party also submits that the author was handed over to the Kyrgyzstan authorities before the Office of the Prosecutor General of Kazakhstan had received the material concerning his appeal to the Human Rights Committee.

4.2 On 25 November 2011, the State party submits that the Office of the Prosecutor General of Kazakhstan by a decision of 23 August 2011 granted the request of the Office of the General Prosecutor of Kyrgyzstan to hand over the Russian citizen Valetov Nikolai Egorovich in order to be tried for the commission of crimes under article 168, paragraphs

2.2, 2.4 and 3.3; article 97, paragraphs 2.3, 2.6, 2.8, 2.15; and article 336, paragraphs 1 and 2.1, of the Criminal Code of Kyrgyzstan[3] and in order to complete the serving of a sentence (1 year and 26 days remaining), imposed by a verdict of the Chuysky Regional Court of 16 March 2005. At the same time, extradition was refused for the purpose of trying the author for the commission of crimes under article 164 of the Criminal Code (theft) because the statute of limitations had expired; under article 168, paragraph 3.1 (robbery committed by a person previously convicted for theft, extortion or banditry) and 259, paragraph 1 (acquisition and storage of narcotic drugs or psychotropic substances without the purpose of sale), because the equivalent crimes had been excluded from the Criminal Code of Kazakhstan; and under article 348, paragraph 2 (theft of a passport or any other important personal document from an individual), because it was not punishable by imprisonment. The said decision was appealed by the author and his appeal was rejected by a decision of Kostanay Municipal Court No. 2 of 21 September 2011. The author further appealed the court decision to the Kostanay Regional Court, which rejected his appeal on 6 October 2011. Accordingly, the extradition decision entered into force and, on 14 October 2011, the author was handed over to the law enforcement bodies of Kyrgyzstan.

4.3 The State party submits that it recognizes the competence of the Human Rights Committee under the Optional Protocol to consider communications from individuals who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. Further, the State party does not aim to violate its obligations under the Optional Protocol and does not consider the Committee's opinion nugatory and futile, in particular regarding the implementation of rule 92 of the Committee's rules of procedure. In the instant case there was "an unfortunate misunderstanding". The letter from the Ministry of Foreign Affairs, relating the Committee's request not to extradite the author did not reach the Office of the Prosecutor General until 19 October 2011, after the extradition had already taken place.

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[3] The relevant articles read in pertinent parts:
"Article 97. Murder
...
(2) Murder: ...
3) Of a person know to the perpetrator to be in a helpless situation or of a minor; ...
6) With particular cruelty; ...
8) For mercenary motives or because hired, or connected with robbery, extortion or banditry; ...
15) By a group of persons by conspiracy".
"Article 168. Robbery
...
(2) The same crime, if committed: ...
2) By a group of persons by conspiracy; ...
(4) The same crime, if committed: ...
4) With entry into a dwelling, premises or other place of storage; ...
(3) The same crime, if committed: ...
3) With infliction of grievous bodily harm on the victim ...
(4) The same crime, if committed: ...
4) With entry into a dwelling, premises or other place of storage".
"Article 336. Escape from a place of detention or custody
(1) Escape from a place of detention, or custody of a person who is serving a sentence or in pretrial detention, shall be punishable by deprivation of liberty for a term of up to three years;
(2) The same act committed: by a group of persons by conspiracy; by an organized group; with the use of violence dangerous for life or health of other persons or with the threat of using such violence; with the use of weapons or objects used as weapons, shall be punishable by deprivation of liberty for a term of three or eight years."

4.4 The State party also submits that, following the author's complaints dated 29 June 2011 and 27 July 2011 regarding torture and ill-treatment while in detention in Kyrgyzstan,[4] the Office of the Prosecutor General of Kazakhstan addressed requests to present guarantees that the author shall not be subjected to torture and verifying the lawfulness of the prosecution against him. On 8 August 2011, a reply was received from the Office of the Prosecutor General of Kyrgyzstan, stating that it guarantees that the author will be granted all possibilities to defend himself, including the assistance of lawyers, that he will not be subjected to torture and other cruel, inhuman and degrading treatment or punishment, in accordance with the Convention against Torture, and that allegations that law enforcement officers conducted unlawful activities during the investigation into the author had been subjected to verification and "could not be confirmed". Further, on 26 October 2011, a request was sent to the Office of the Prosecutor General of Kyrgyzstan to allow representatives of the diplomatic or consular mission of Kazakhstan to meet with the author in order to verify that the guarantees are being respected. The Office of the Prosecutor General of Kyrgyzstan responded that it does not object to such meeting. The State party submitted that the meeting will be organized shortly and that it will inform the Committee of its outcome.

4.5 The State party submits that the author's communication should be declared inadmissible because he failed to exhaust all available remedies in accordance with article 5, paragraph 2 (b), of the Optional Protocol. In particular, the State party maintains that the author started making unfounded allegations that he had been tortured by the law enforcement bodies of Kyrgyzstan after he found out that they had requested his extradition for crimes committed on the territory of Kyrgyzstan. The author did not present to the Committee any evidence, such as judicial acts regarding torture or medical certificates, since no such documents exist. There are no complaints or petitions regarding the violations of his right to defence or torture addressed to the Kazakhstan courts by the author. A conclusion may be made that the arguments of the author regarding torture are based on a mere possibility, are only suppositions and suspicions and lack any solid arguments and facts. The State party deems that the author's allegations that he became an invalid as a result of being tortured by Kyrgyz law enforcement officers were motivated by the desire to prevent the extradition at all cost. Nonetheless, the above facts will be subjected to verification by the Kazakhstan authorities: in the near future a request for a medical examination of the author will be sent to the Office of the Prosecutor General of Kyrgyzstan. According to medical documentation regarding the author's health, obtained from the penitentiary institution where the author served his sentence in Kazakhstan, he was only suffering from "general illnesses", such as bronchitis, tonsillitis, problems with the ears and haemorrhoids.

Further submissions from the author

5.1 On 28 November 2011, the author submitted that he had been extradited to Kyrgyzstan despite the Committee's interim measures request and charged with serious crimes under articles 97, 168 and 336 of the Criminal Code of Kyrgyzstan. He submits that he had already been questioned once, that he fears that he will not be given a fair trial and might be subjected to torture again. He believes that it is the objective of the Kyrgyz authorities to convict him and sentence him to long-term imprisonment and that the domestic procedures do not give him a realistic opportunity to protect himself, since they are not in line with the Covenant.

[4] Copies of these complaints had not been submitted by the State party.

5.2 On 9 December 2011, the author submits that by handing him over to the Kyrgyz authorities despite the Committee's request for interim measures, the State party had violated article 1 of the Optional Protocol. In both submissions, he informs the Committee that he submitted complaints to the Russian Federation Embassy, the Office of the Prosecutor General and the Ombudsman.

Author's comments on the State party's observations

6.1 On 19 March 2012, counsel submits that, already in April 2009, the author had complained to the Kazakhstan International Bureau for Human Rights and Rule of Law that, in June 2001, he had been subjected to torture in Kyrgyzstan but that they had refused to listen to his allegations. After he was convicted to 16 years' imprisonment in Kazakhstan, he filed multiple complaints with different bodies, including regarding the torture he experienced in Kyrgyzstan.[5]

6.2 The author submits that, despite his torture allegations, no forensic medical experts were ever appointed to him, but he maintains that his body still bears the scars resulting from torture.

6.3 When he was detained in 2001, the author informed the Kazakhstan police that he was a citizen of the Russian Federation and requested contact with the nearest representative of the Russian Federation. The officer, however, destroyed his Russian Federation passport and military card. The author repeatedly complained to the Prosecutor's office regarding that violation of his rights, but without success. For example, on 20 July 2007, the Dzhambysky District Prosecutor responded to the author's complaint that, according to the documents in the court case file, the author was a citizen of Kazakhstan and he saw no reason to initiate an investigation. In October 2008, the Karaganda Prosecutor responded that the author's allegation of his illegal conviction and the destruction of his identity documents were unfounded. However, in November 2008 the Migration Police Directorate stated that the author was a citizen of the Russian Federation. The above confirms that no effective investigation of his allegations took place. On 6 August 2009, the Kazakhstan International Bureau for Human Rights and Rule of Law sent a request to the Office of the Prosecutor General of Kazakhstan to investigate the destruction of his identity documents and to prosecute the responsible individuals, but it received no response.

6.4 On 11 July 2011, Kostanay Municipal Court No. 2 allowed a 40-day extradition remand of the author following an extradition request from Kyrgyzstan. The extradition remand was extended on three occasions until 15 October 2011. The author submits that, in the ruling extending his extradition remand, dated 8 September 2011, and the 21 September 2011 decision rejecting his appeal of the decision to extradite him, the Kazakhstan courts violated the presumption of innocence, because they referred to him as having committed crimes.

6.5 The author further submits that, when he was extradited on 14 October 2011, he was in possession of the Committee's letter, informing him that a request not to extradite him had been made under rule 92 of the Committee's rules of procedure, but that document was ignored by the officers in the detention centre in Kazakhstan.

6.6 With regard to the State party's submission that an "unfortunate misunderstanding" occurred in his case, because the Committee's request did not reach the Prosecutor's office until 19 October 2011, 23 days after it was issued, the author maintains that this argument is not valid, since the State party had the request for interim measures, but still proceeded

[5] The submission does not specify to which institutions/courts the author complained.

with his extradition. He maintains that the State party was aware of the author's allegations that he is at risk of torture or inhuman or degrading treatment and that as a minimum it should have properly assessed that risk, at the time of the extradition, taking into consideration his testimony, information regarding the use of torture in Kyrgyzstan from non-governmental organization and it should have conducted a medical examination in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The author further maintains that the assurances provided on 8 August 2011 by the Office of the Prosecutor General of Kyrgyzstan for the respect of the author's rights did not contain any concrete guarantees nor a mechanism for the monitoring of the implementation of those assurances.[6] He maintains that the document is an insufficient guarantee for his rights and it proves that the assurances are not taken seriously and that a real risk exists for the author. He further notes that the State party did not present any documents proving that they verified the implementation of the above guarantees.

6.7 The author maintains that neither the authorities of Kazakhstan nor the authorities of Kyrgyzstan had conducted a proper investigation into his torture allegations as required by the Istanbul Protocol. He could not participate in the investigation procedure, he was never questioned regarding the violations of his rights and no expert medical examination was ever conducted. The "verification" was purely a formality and was not aimed at establishing responsibility and finding and punishing the perpetrators. Only after extraditing the author did the State party start mentioning the possibility of visiting him and requesting a medical examination. The author maintains that these questions should have been raised before his extradition.

6.8 The author notes that, in his complaints, he made references to the *2009 World Report* of Human Rights Watch[7] and the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, from his 2011 mission to Kyrgyzstan (A/HRC/19/61/Add.2), which state that the use of torture and ill-treatment to extract confessions remains widespread, there is a serious lack of sufficiently speedy, thorough and impartial investigation into allegations of torture and ill-treatment and the general conditions in most places of detention visited amount to inhuman and degrading treatment.

6.9 The author submits that implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual. It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views. He notes that the Committee has repeatedly noted that a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile.[8] He submits that he complained to the State party that his rights under article 7 will be violated if he is extradited to Kyrgyzstan. The State party was informed of that, but it proceeded with his extradition before the Committee could finalize its review of the case and issue its Views. The author also refers to the Committee's Views on communication No. 2024/2011, *Israil*

[6] The author refers to the Committee's jurisprudence in communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al* v. *Kyrgyzstan*, Views adopted on 16 July 2008, para. 12.5.

[7] Available from www.hrw.org/sites/default/files/reports/wr2009_web.pdf.

[8] The author makes reference to the Committee's jurisprudence in in communications No. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al* v. *Kyrgyzstan*, para. 10.2.

v. *Kazakhstan*, where the Committee recalled that interim measures pursuant to rule 92 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol and that flouting of the rule, especially by irreversible measures such as the author's extradition undermines the protection of Covenant rights through the Optional Protocol.[9] The author submits that he had been subjected to torture in Kyrgyzstan and that the Kazakh authorities knew about that; that he had a copy of the Committee's letter requesting interim measures; and that he had provided reports regarding the general human rights situation in Kyrgyzstan. More than two weeks had passed after the request for interim measures had been received, but the author was still handed over to a country where real risk of torture or cruel treatment existed. He reiterates that the above violated his rights under article 7 of the Covenant.

Additional information by the State party

7.1 On 22 March 2012, the State party reiterates that the Office of the Prosecutor General of Kazakhstan by a ruling of 23 August 2011 granted the request of the Office of the Prosecutor General of Kyrgyzstan to extradite the author.

7.2 With regard to the author's allegations that he was unlawfully and without grounds tried and convicted by the Kazakhstan courts, the State party submits that the author had been convicted on 3 February 2003 by the Ryskulovsky District court for crimes under article 175, part 2, paragraphs (a) and (b), article 178, part 2, paragraphs (a), (b) and (c), and article 259, part 2, of the Criminal Code of Kazakhstan. The State party restates the content of the verdict and submits that the verdict was appealed and recognized as lawful and well grounded. The author was placed in Correctional Colony AK-159/20 on 16 April 2004 to serve his sentence, but on 4 May 2004 he did not return to the colony at the required time and went into hiding. He was placed on the list of wanted individuals and he was eventually arrested. On 16 January 2007, he was convicted under article 359 of the Criminal Code of Kazakhstan (evasion of punishment in the form of imprisonment) and sentenced to five years and three months' imprisonment.

7.3 The State party submits that, in 2002, it received from Kyrgyzstan a criminal case against the author with charges of murder, theft, illegal possession of narcotics, banditry and theft of documents. While he had been under arrest pending investigation of the above crimes, the author escaped from the detention centre in Kyrgyzstan on 23 August 2001. Separate charges were brought against the author regarding the escape from the detention centre and he was placed on a wanted list. The author was found on the territory of Kazakhstan, serving a sentence following a conviction by a Kazakh court, and the above Kyrgyz criminal case was transmitted to the Kazakh authorities in accordance with the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the Chisinau Convention) of 7 October 2002.

7.4 The State party further submits that, on 23 May 2007, another criminal case on charges of escaping from a penitentiary in Kyrgyzstan against N.V. Tytryshny was transferred from Kyrgyzstan to Kazakhstan. The convict had escaped from the penitentiary 1 year and 26 days before the end of the sentence. Through comparison of fingerprints it was established that N.V. Tytryshny and the author are the same person. On that basis, the two cases were joined. In 2008, however, it was established that the author is a citizen of the Russian Federation and, accordingly, in accordance with articles 192 and 528 of the Code of Criminal Procedure of Kazakhstan, the above cases fall outside the Kazakhstan jurisdiction. Accordingly, the cases were returned to the Kyrgyzstan authorities.

[9] Views adopted on 31 October 2011, para. 7.3.

7.5 The State party submits that, in accordance with article 85 of the Convention,[10] Kyrgyzstan is obliged to report regarding the outcome of the criminal prosecution against the extradited individual, but at the time of the submission the Kyrgyzstan court had not yet reviewed the charges against the author on the merits. The State party proceeds to reiterate its submission of 25 November 2011 (see paras 4.2–4.5 above).

7.6 The State party further submits that, following its request, the Kyrgyzstan authorities conducted a medical examination of the author in order to verify the traces of torture. It submits that, according to the conclusion of the examination, dated 11 January 2012, no injuries including to the external genitals of the author, had been discovered. The State party further submits that, on 22 December 2011, representatives of the Kazakhstan Embassy met with the author in the detention centre in Bishkek and established that his health and living conditions were in good condition and "facts of torture were not confirmed".

7.7 Regarding the author's allegations that, as a citizen of the Russian Federation, he should not be extradited, the State party clarifies that the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters does not prevent the State party from extraditing the author to his country of origin or to a third country and that, in the latter case, the consent of his country of citizenship is not required.

Further submissions by the author

8.1 On 17 May 2012, the counsel of the author reiterates all arguments submitted on 19 March 2012. Counsel further states that she has no contact with the author, that she has not received a copy of the conclusion of the medical expert examination, allegedly conducted on 11 January 2012, and that she cannot assess whether it was competent and complete. She further submits that such an examination should have been conducted before and not after the extradition.

8.2 Regarding the conviction of the author by the Ryskulovsky District Court in Kazakhstan in December 2001, counsel submits that the author had stated that he had been forced to sign a confession through the application of psychological pressure and torture, and proceeds to argue that some of the other evidence against the author was not conclusive. She submits that the author appealed the verdict before the Dzambylansky Regional Court and that, on 7 March 2002, the latter issued a decision striking from the verdict some of the charges and reducing the verdict to 12 years' imprisonment. The author filed a further appeal to the supervisory review chamber of the same court, which revoked the previous decisions and returned the case for a retrial before a different judicial panel. The retrial took place on 6 October 2002, and the author was convicted to nine years' imprisonment. The author appealed the new verdict before the Dzambylansky Regional Court and the latter revoked the verdict and returned the case for a retrial once more. On 2 March 2003, the author was convicted to eight years' imprisonment. Following the author's appeal on 20 March 2003, the supervisory review chamber of the Dzambylansky Regional Court amended the verdict, reducing the sentence to seven years' imprisonment.

8.3 Counsel reiterates that the author's rights under article 7 of the Covenant had been violated because the State party did not comply with the Committee's request for interim measures.

8.4 On 7 November 2012, counsel submits that, on 10 October 2012, she received a statement from the author, dated 10 September 2012, in which he alleged that, on 24 April 2012, while he was in a detention centre in Kayyngdy, he was subjected to physical

[10] It is not clear from the submission to which Convention the State party refers.

violence and that special food that he had received for the celebration of an Orthodox holiday was destroyed by the guards. He also stated that the detention cells in the detention centre lacked toilets and that he was given drinking water in bottles, but these were taken away after a period of time. He alleged that he complained regarding the conditions of detention to the prosecutor's office and to the President, but that all his complaints were ignored. On 11 May 2012, in protest against the repeated use of torture, the lack of investigation into his torture allegations, the "illegal extradition" to Kyrgyzstan and numerous other violations of his human rights, the author "sewed his mouth", and started an indefinite "dry" hunger strike. Later, on an unknown date, the author began to drink water. On 6 June 2012, the counsel of the author was notified of the hunger strike. On 22 October 2012, the author informed his counsel that, during the hunger strike, he was not visited by any attorney, nor by representatives of Kazakhstan or by the prosecutors' office of Kyrgyzstan. Reportedly he had been transferred to a medical unit in mid-October 2012, but he was not receiving proper care and supervision; his weight was not controlled and it was unclear if he was provided with enough water.

8.5 Counsel submits that the author is unable to freely communicate with her. The author also alleges that the conditions of his detention violate of articles 7 and 10 of the Covenant, including through the lack of proper medical care and the lack of access by the defence.

8.6 Counsel submits that Kazakhstan has repeatedly "failed to fulfil its obligations in the present case" by not holding regular meetings or monitoring the human rights of the author, and not reacting to the allegations of torture, actions that it was supposed to conduct according to the "diplomatic assurances" concluded between Kazakhstan and Kyrgyzstan.

8.7 Counsel submits that, owing to the fact that the author has been on hunger strike since 11 May 2012, but also due to the refusal of the Kyrgyz authorities to provide adequate medical care to him, there is a direct threat to the life and safety of the author. Counsel requests the Committee to issue an interim measures request, namely that representatives of the Embassy of Kazakhstan urgently visit the author, ensure a medical examination of his health by independent doctors and, if necessary, require the provision of adequate health care for the preservation of his life and security, in accordance with the Declaration on Hunger Strikers (Declaration of Malta);[11] in line with the obligations assumed under the Covenant and the previously obtained assurances from the authorities of Kyrgyzstan, that the Kazakhstan authorities request the Office of the Prosecutor General of Kyrgyzstan to conduct an efficient, thorough and independent investigation into the torture allegations of the author; that the Kazakhstan authorities develop mechanisms for effective and constant visits to ensure up-to-date, full and accurate information about the human rights' situation of the author; and that the State party inform the Human Rights Committee of the action taken to prevent irreparable damage to the life and health of the author.

The Committee's request for information

9. On 9 November 2012, the Special Rapporteur on new communications and interim measures requested the State party to provide the Committee with up-to-date information regarding the author's whereabouts and health condition, in view of the agreement between Kazakhstan and Kyrgyzstan, allowing Kazakhstan to monitor the situation of the author after the extradition. He also requested information on the measures taken to comply with this request no later than 9 December 2012.

[11] Adopted by the 43rd World Medical Assembly, Malta, November 1991, and editorially revised at the 44th World Medical Assembly, Marbella, Spain, September 1992.

State party's further submission

10.1 On 18 December 2012, the State party submits that, according to information it received from the Office of the Prosecutor General of Kyrgyzstan, the author had been tried by the Panfilovsky District Court of the Chuysky Region and, on 26 April 2012, he had been convicted for crimes under articles 97, 168 and 336 of the Criminal Code of Kyrgyzstan and sentenced to 16 years' imprisonment. On 15 May 2012, the author appealed the verdict and his appeal was still under review. The State party submits that, on 9 November 2012, a forensic psychological examination was ordered in relation to the verification of his torture allegations. Since the author was on hunger strike and his health was deteriorating, the examination was postponed until 21 November 2012. However, the author sewed his own mouth and refused to participate in the psychological examination. On 23 November 2012, in the presence of the Deputy Prosecutor of Panfilovsky District, a medical examination of the author and a "discussion" took place. The conclusion of the above psychological medical examination was that that it did not reveal any injuries to the author, and that he is currently suffering from third-degree hypertonia. At the time of the submission, the author was continuing his hunger strike and had been placed in the medical unit and was receiving medical assistance. The State party disputes the counsel's submission that the author had not been receiving proper medical attention since, according to the log for emergency medical assistance to the detainees on 16 and 17 April 2012, the author had complained of headaches, arrhythmia and dizziness, an ambulance was called and he had received assistance.

10.2 Regarding the author's complaint that, on 24 April 2012, he and other detainees were subjected to physical violence by some detention centre employees and police officers, the allegations had been investigated, other detainees and guards had been questioned and they disagreed with the author's version of the events. A decision was taken not to initiate a criminal prosecution against the guards, that decision was confirmed upon appeal and the author was duly informed of the outcome of his complaint. The State party submits that, since none of the author's torture allegations have been confirmed, his complaint against Kazakhstan was unfounded.

10.3 Regarding the author's complaint that he had not been visited by Kazakhstan representatives, the State party submits that the detention centre where the author is detained is checked on weekly basis by the Prosecutor's office responsible for the supervision of the lawfulness in the correctional institutions, which notes the results in a journal, that could be requested by the Kazakhstan authorities and transmitted to the Committee if necessary. The State party further submits that representatives of its Embassy have not visited the author in Kyrgyzstan to date, since they had not received permission to do so from the Ministry of Foreign Affairs of Kyrgyzstan.

Further submissions from the parties

11.1 On 15 February 2013,[12] counsel submits that the author informed her that, on 31 January 2013, he was informed by the head of the medical service of the detention centre in Bishkek that he is suffering from tuberculosis and, subsequently, he was transferred to the correctional colony in the village of Moldovanovka (IK 31), where detainees with this diagnosis are held. He confirmed that he continues his hunger strike and that he is only taking sweet tea and chicken broth; he refuses infusions and medication, since he does not trust the personnel in the detention centre. The author had sewn his mouth with thread, but it rotted, so he replaced it with wire, which was forcibly removed by the

[12] Since the counsel for the author is in Kazakhstan, she made an agreement with a lawyer in Kyrgyzstan to visit the author and transmit information from him regarding the case.

personnel of the detention centre on 31 January 2013. He stated that he would terminate the hunger strike if he is provided with a lawyer to defend his rights against the charges brought against him.

11.2 Regarding the events of 24 April 2012, the author submits that he was taken to an interrogation room, where there were several police officers, who stated that they remembered him from 2001, when he complained about them and proceeded to punch him in the head, kidneys and legs. He sustained bruises and bumps. On 26 April 2012, he attempted to complain to a judge, but the latter refused to initiate proceedings. The author maintains that the investigation of the incident was inadequate: detainees who were also ill-treated by the police officers were not questioned, despite the fact that the author provided their names, and a medical examination was not conducted in a timely manner. The decision not to initiate criminal prosecution against the perpetrators was not taken until 24 November 2012. The author maintains that Kyrgyzstan failed to conduct a thorough investigation and Kazakhstan failed to insist that a thorough investigation was conducted.

11.3 With regard to the expert medical examination, the author submits that, on one occasion, on 23 November 2012, he was taken on a stretcher for medical examination. The Deputy Prosecutor of the Panfilovsky Region was there as well as the town's forensic medic. The latter did not examine the author, but simply asked him a few questions. The author maintains that he was not offered a psychological examination and that he never refused to undergo one. At the time of the submission, the author was able to move only with crutches and was suffering from exhaustion, high blood pressure and coronary disease.

11.4 Based on the above and the State party's submission that its diplomatic representation cannot visit the author, the author disputes the State party's assertion that his rights were not violated and maintains that his extradition violated the obligations of Kazakhstan under article 7 of the Covenant.

11.5 On 27 February 2013, the State party reiterates its submission from 18 December 2012 (see paras. 10.1–10.3 above).

11.6 On 23 April 2013, the counsel for the author submits that she has lost contact with him, but maintains that the State party's submission does not bring any new information and that Kazakhstan had violated its obligations under article 7 of the Covenant.

11.7 On 14 August 2013, the State party reiterates its submission regarding the criminal proceedings against the author (see para. 10.1 above) and submits that, according to information it received from the Office of the Prosecutor General of Kyrgyzstan on 30 July 2013, the 26 April 2012 verdict against the author was revoked on 12 June 2013 by a decision of the Chuysky Regional Court and returned to the first instance court for a retrial. On 24 July 2013, the prosecution filed a request for a supervisory review of the 12 June 2013 decision, which is still under review. It further submits that a meeting of the author with Kazakh diplomatic representatives is being planned.

11.8 On 9 September 2013, the counsel for the author submits that the State party's submission does not contain any new arguments and that she maintains the previous submissions of the author.

Issues and proceedings before the Committee

Non-respect of the Committee's request for interim measures

12.1 The Committee notes that the State party extradited the author although his communication had been registered under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls[13] that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (art. 5, paras. 1 and 4).[14] The Committee takes note of the State party's submission that the letter from the Ministry of Foreign Affairs did not reach the Office of the Prosecutor General until the extradition had taken place. The Committee observes, however, that its request had been transmitted to the Permanent Mission of the State party on 27 September 2011. The request was reiterated on 14 October 2011, after receiving information that the extradition of the author was imminent. Despite that, the extradition still took place on 14 October 2011. It is an obligation of the State party to organize the transmittal of the Committee's requests to the responsible authorities within its territory in a way that would allow the Committee's request to be implemented in a timely manner. The Committee further notes author's uncontested submission that, by the time of extradition, he was in possession of the Committee's letter and that he alerted officers in the detention centre about the request made by the Committee under the rule 92 of the Committee's rules of procedure, but this information was ignored.

12.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if its inaction serves to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleged that his rights under article 7 of the Covenant would be violated, should he be extradited to Kyrgyzstan. Having been notified of the communication, the State party breached its obligations under the Optional Protocol by extraditing the author before the Committee could conclude its consideration and examination, and the formulation and communication of its Views. It is particularly regrettable for the State to have done so after the Committee acted under rule 92 of its rules of procedure, requesting the State party to refrain from extraditing the author.

12.3 The Committee recalls[15] that interim measures pursuant to rule 92 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol. Flouting of the rule, especially by irreversible measures such as, as in the present case, the author's extradition undermines the protection of Covenant rights through the Optional Protocol. In the Committee's view, those circumstances disclose a manifest breach by the State party of its obligations under article 1 of the Optional Protocol.

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[13] See, communication No. 869/1999, *Padilla and Sunga* v. *the Philippines*, Views adopted on 19 October 2000, para. 5.1.

[14] See communication No. 1910/2009, *Zhuk* v. *Belarus*, Views adopted on 30 October 2013, para. 6.2, and communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al* v. *Kyrgyzstan*, para. 10.1.

[15] See communication No. 964/2001, *Saidova* v. *Tajikistan*, Views adopted on 8 July 2004, para. 4.4.

Consideration of admissibility

13.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

13.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

13.3 As to the author's claim under article 14, paragraph 3, of the Covenant, the Committee notes that the author does not appear to have brought this issue before the domestic courts. Given the author's failure to do so, the Committee considers that this part of the communication is inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

13.4 The Committee notes the State party's submission that the author's communication should be declared inadmissible because he failed to exhaust all available remedies, since he started making allegations that he had been tortured by the law enforcement bodies of Kyrgyzstan only after he found out that they had requested his extradition. The Committee, however, notes that, according to the State party's own submission (see para. 4.4 above), the author raised his claims in his complaints, dated 29 June 2011 and 27 July 2011, and in the context of the extradition proceeding before the State party's courts. Accordingly, the Committee is not precluded from considering the communication by article 5, paragraph 2 (b), of the Optional Protocol.

13.5 The Committee considers that the author has sufficiently substantiated his claim under article 7 of the Covenant, for purposes of admissibility. Accordingly, it declares this claim admissible and proceeds to its examination on the merits.

Consideration of the merits

14.1 The Human Rights Committee has considered the communications in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

14.2 As to whether the author's extradition to Kyrgyzstan exposed him to a real risk of torture or ill-treatment, the Committee observes that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.[16] This principle should not be subject to any balancing with considerations of the type of criminal conduct an individual is accused or suspected of.[17] The Committee notes that the prohibition of refoulement that derives from article 7 of the Covenant imposes an obligation on the State party to conduct a thorough assessment of the information that was known, or ought to have been known, to the State party's authorities at the time of the extradition and that is relevant for the determination of the risks associated with the extradition. The Committee reiterates that, if a State party removes a person within its jurisdiction to another jurisdiction where there are substantial grounds for believing that extradited person will

[16] Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI, sect. A, para. 9.

[17] See communication No. 2024/2011, *Israil* v. *Kazakhstan*, para 9.4.

face a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, the State party itself may be in violation of the Covenant.[18]

14.3 The Committee notes that the State party conducted an investigation in response to the author's complaints dated 29 June 2011 and 27 July 2011, with the aim of verifying the allegations of torture. The Committee also notes, however, the author's uncontested allegations that the "verification was purely a formality", that author could not participate in the investigation procedure and was never questioned and no forensic examination was conducted.

14.4 The Committee also notes author's submission that, as a result of torture while in detention in Kyrgyzstan, he sustained severe bodily injuries, which resulted in invalidity. The Committee further notes the State party's submission that the author's claims of torture by the Kyrgyz law enforcement officers are unfounded and are motivated by the desire to prevent the extradition. In the Committee's view, the State party has failed to explain why it rejected the author's claims of torture without carrying out medical forensic examination prior to the deportation of author, which could have verified his allegation that his body still bears the scars and signs of torture. The Committee also notes that, after the extradition had taken place, the State party recognized the need and requested the Office of the Prosecutor General of Kyrgyzstan to carry out a medical examination in order to verify the author's allegations of torture.

14.5 The Committee recalls that, at the time of the author's extradition, it was known, or should have been known, to the State party's authorities that there were credible public reports of widespread use of torture against detainees in Kyrgyzstan.[19] It observes that, in assessing the existence of a real risk of irreparable harm in the country requesting the extradition, the competent Kazakh authorities had to take into account all relevant considerations, including the prevailing circumstances in Kyrgyzstan. The Committee notes that the State party procured assurances from the Office of the Prosecutor General of Kyrgyzstan to respect the author's rights. The existence of assurances, their content and the existence and implementation of enforcement mechanisms are all elements which are relevant to the overall determination of whether, in fact, a real risk of proscribed ill-treatment existed. The Committee reiterates, however, that, at the very minimum, the assurances procured should contain a monitoring mechanism and be safeguarded by practical arrangements as would provide for their effective implementation by the sending and the receiving States.[20] The Committee notes the State party's assertion that, to date, representatives of its Embassy were unable to visit the author at the place of his detention in Kyrgyzstan, since they did not receive permission to do so from the Kyrgyz authorities. The State party failed to inform the Committee if it took any action in response to this refusal, in order to implement the "diplomatic assurances" concluded between Kazakhstan and Kyrgyzstan.

14.6 The Committee further notes allegations by the author that, after his extradition, he was subjected to treatment prohibited under article 7 of the Covenant and that, on 11 May

[18] See communication No. 469/1991, *Ng* v. *Canada*, Views adopted on 5 November 1993, para. 6.2; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III, para. 12.

[19] See concluding observations of the Human Rights Committee, the Kyrgyz Republic, CCPR/CO/69/KGZ, 20 July 2000, para. 7; the Report of the Committee against Torture to the General Assembly, A/55/44, para. 74.

[20] See communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al* v. *Kyrgyzstan*, para 12.5, and communication No. 1416/2005, *Alzery* v. *Sweden*, Views adopted on 25 October 2006, para. 11.5.

2012, in protest against the repeated use of torture, the lack of investigation of his torture allegations and numerous other violations of his human rights, the author started a hunger strike. Representatives of the State party failed to visit the author in the detention facility, despite the request made by the author to the State party. Such a failure may be attributable to the absence of practical arrangements in the assurances procured or to a lack of sufficient efforts by the State party to ensure the implementation of the assurances. Under those circumstances, the Committee concludes that the procurement of general assurances from the Prosecutor General of Kyrgyzstan cannot be considered an effective mechanism protecting the author from the risk of torture.

14.7 Thus, the Committee observes that the decision of the Kazakh authorities to extradite the author to Kyrgyzstan, without conducting a proper investigation of the allegations of torture and ignoring credible reports of a widespread use of torture against detainees there, as well as unjustified refusal to carry out a medical examination prior to his extradition, points at serious irregularities in the decision-making procedures and demonstrates that the State party failed to consider important risk factors associated with an extradition. The Committee further notes that the failure of the State party to subsequently visit the author and monitor conditions of his detention indicates that the procurement of assurances from the Office of the Prosecutor General of Kyrgyzstan should not have been accepted by the State party as an effective safeguard against the risk of violation of the rights of author. Therefore, the Committee concludes that the author's extradition amounted to a violation of article 7 of the Covenant.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Kazakhstan of the author's rights under article 7 of the Covenant. The State party also breached its obligations under article 1 of the Optional Protocol to the Covenant.

16. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is requested to put in place effective measures for the monitoring of the situation of the author of the communication, in cooperation with the receiving State. The State party should provide the Committee with updated information, on a regular basis, of the author's situation. The State party is also under an obligation to prevent similar violations in the future.

17. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views, and to have them translated in official languages of the State party and widely distributed.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]